

FILED

2007 NOV 19 PM 4:16  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF ALABAMA  
 Southern Division  
 U.S. DISTRICT COURT  
 N.D. OF ALABAMA  
 CAVENDISH FARMS, INC., )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No.  
 ) CV-07-P-2105-S  
 )  
 DISCOUNT SALES, INC. and DAVID ) **COMPLAIN**  
 REED, individually, )  
 )  
 Defendants. )

---

For its Complaint, Plaintiff respectfully states as follows:

THE PARTIES

1. Cavendish Farms, Inc., (the "Plaintiff"), has offices in New Brunswick, Canada and operates its business under a valid USDA-issued PACA License.
2. Plaintiff sells wholesale quantities of perishable agricultural commodities ("Produce") in interstate commerce.
3. Defendants are:
  - a. Discount Sales, Inc., (the "Company"), is a purchaser of Produce in wholesale quantities and, therefore a "dealer", pursuant to 499a(b)(6) of the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. §§ 499a-499t (the "PACA"),
  - b. David Reed individually (the "Principal"), an officer or director or holder in a position to control the Company at all times relevant to this action;

### JURISDICTION AND VENUE

4. The District Court has federal question jurisdiction over this civil action pursuant to § 499e(4) of the PACA and 28 U.S.C. § 1331. The Court has supplemental jurisdiction over Plaintiff's other claims pursuant to 28 U.S.C. § 1367(a).

5. Venue in this District is based on 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District and a substantial part of the property involved in his action is situated in this District.

### FACTUAL ALLEGATIONS

6. Plaintiff sold to the Defendants, and the Defendants purchased from Plaintiff, Produce having an invoice value in the current total amount of \$25,829.81 as set forth in the chart attached hereto and incorporated herein as Exhibit A.

7. The Company accepted each load of Produce which corresponds to the invoice number as listed on Exhibit A.

8. The Company accepted each load of Produce stated in Exhibit A in Birmingham, Alabama.

9. The Plaintiff issued to the Company, and the Company received, each of the invoices listed in Exhibit A.

10. The Plaintiff is an unpaid supplier or seller of Produce having sold Produce to the Defendants for which it remains unpaid.

11. The Company failed to deliver good funds to the Plaintiff in the amount set forth under "Trust Amount" in Exhibit A, despite repeated demands from the Plaintiff.

**COUNT I.**

**ENFORCEMENT OF THE PACA TRUST  
7 U.S.C. § 499e(c)  
COMPANY and PRINCIPAL**

12. Plaintiff re-alleges paragraphs 1 through 11.

13. The Defendants are in possession, custody and control of all assets derived from the Company's sale of Produce (the "PACA Trust Assets") for the benefit of Plaintiff and other similarly-situated PACA trust beneficiaries.

14. The Defendants failed to deliver to Plaintiff sufficient funds from the PACA Trust Assets for all shipments of Produce as listed in Exhibit A.

15. The Defendants failed to preserve sufficient amounts of the PACA Trust Assets to fully satisfy all qualified PACA trust claims, such as the Plaintiff's unpaid claim asserted in this action.

16. As a direct result of the Defendants' failure to properly protect the PACA Trust Assets from dissipation, the Plaintiff suffered damages which are covered under the PACA trust in the current value of \$25,829.81, plus additional contractually-due costs of collection, including attorneys' fees and interest, incurred in this action.

17. Plaintiff seeks the entry of an Order directing the Defendants to immediately turn over to the Plaintiff, as a beneficiary of this trust, sufficient PACA Trust Assets to fully satisfy the Plaintiff's unpaid claim as stated herein.

**COUNT II.**

**FOR VIOLATION OF THE PERISHABLE AGRICULTURAL  
COMMODITIES ACT: FAILURE TO PAY PROMPTLY  
7 U.S.C. § 499b(4)**

**COMPANY and PRINCIPAL**

18. Plaintiff re-alleges paragraphs 1 through 17.
19. The Defendants received each of the shipments of Produce referenced in paragraph 6 above.
20. The Defendants failed to pay these invoices within the applicable payment terms in effect between the parties at the time of each transaction.
21. As a direct result of the Defendants' failure to pay for each invoice within terms, the Plaintiff has incurred damages in the total current amount of \$25,829.81.
22. Plaintiff seeks entry of an Order directing the Defendants to immediately pay the current amount of \$25,829.81, plus additional contractually-due costs of collection, including attorneys' fees and interest, incurred in this action.

**COUNT III.**

**BREACH OF CONTRACT**

**COMPANY**

23. Plaintiff re-alleges paragraphs 1 through 22.
24. Plaintiff and the Company entered into contracts under which Plaintiff agreed to sell the Produce and the Company agreed to purchase the Produce, each of which are referenced in paragraph 6 above.
25. Plaintiff delivered conforming goods to the Company and has otherwise satisfied all

conditions of the contracts.

26. The Company failed to pay for each shipment of Produce referenced in paragraph 6 above.

27. Plaintiff seeks entry of an Order directing the Company to immediately pay the principal sum of \$25,829.81, plus additional contractually-due costs of collection, including attorneys' fees and interest, incurred in this action.

#### **COUNT IV.**

##### **BREACH OF FIDUCIARY DUTY TO PACA TRUST BENEFICIARIES**

##### **PRINCIPAL**

28. Plaintiff re-alleges paragraphs 1 through 27.

29. At all times relevant to this action, the Principal was an officer of the Company and the person in charge of all aspects of the Company's business undertakings.

30. At all times relevant to this action, the Principal was the person engaged in the business of buying or selling Produce in interstate commerce in wholesale quantities.

31. The Principal controlled and managed the Company's operations and had control over its financial dealings, including those involving the PACA Trust Assets.

32. The Principal had authority to direct the payment of the Company's operating funds and otherwise had the power to direct the application or disposition of the PACA Trust Assets.

33. As an officer of the Company, the Principal was a statutory trustee with a duty to safeguard the PACA Trust Assets and required to maintain the trust assets in such a manner as to ensure there are, at all times, sufficient trust assets to satisfy all outstanding PACA trust obligations such as that owed to Plaintiff.

34. Because the Principal controlled the Company, and Plaintiff's invoices have not been paid from PACA trust assets as their bills fell due, the Principal has breached his respective fiduciary duties under the PACA trust.

35. The Principal continues to hold any and all PACA Trust Assets having come into his individual possession as trustee for Plaintiff's beneficial interest in the PACA trust.

36. The Principal is personally liable to Plaintiff, which liability is joint and several with the Company and any third parties having received any PACA trust assets with actual or constructive notice of the breach of the PACA Trust, for the dissipation of the PACA trust to the extent of 25,829.81, plus additional contractually-due costs of collection, including attorneys' fees and interest, incurred in this action, to be satisfied from the Principal's personal assets.

**FOR THESE REASONS,** Plaintiff seeks the entry of an Order providing as follows:

- A) As to Counts I and II, entering a Final Judgment in favor of Plaintiff and against the Defendants, jointly and severally, in the principal amount of \$25,829.81, plus additional costs of collection incurred in this action, less any actual recovery on other Counts herein;
- B) As to Count III, entering a Final Judgment in favor of Plaintiff and against the Company for breach of contract in the principal amount of \$25,829.81, plus additional costs of collection incurred in this action, less any actual recovery on other Counts herein;
- C) As to Count IV, entering a Final Judgment in favor of Plaintiff and against the Principal, on a joint and several basis with the Company, for a breach of his respective fiduciary duties to the PACA trust, in the principal amount of \$25,829.81



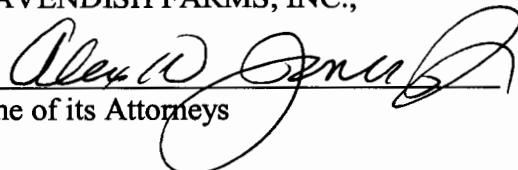
plus additional costs of collection incurred in this action, less any actual recovery on other Counts herein, and;

- D) Providing such other and further relief as the Court deems appropriate upon consideration of this matter.

Date: November 19, 2007

Respectfully submitted,

CAVENDISH FARMS, INC.,

  
One of its Attorneys

Alexander W. Jones, Jr., Esq.  
Bar No.: ASB9177-O70A  
Pritchard, McCall & Jones, LLC  
505 North 20<sup>th</sup> Street  
800 Financial Center  
Birmingham, Alabama 35203  
Telephone: 205-328-9190  
Fax: 205-458-0035  
Email: [irmaj@pm-j.com](mailto:irmaj@pm-j.com)

Michael J. Keaton, Esq.  
KEATON & ASSOCIATES, P.C.  
1278 W. Northwest Highway, Suite 903  
Palatine, Illinois 60067  
Telephone: (847) 934-6500  
Email: [johnston@pacatruster.com](mailto:johnston@pacatruster.com)

**REQUEST FOR SERVICE BY CERTIFIED MAIL**

Please serve the Defendant Discount Sales, Inc. and Defendant David Reed by certified mail pursuant to the Alabama Rules of Civil Procedure 4.1 and Federal Rules of Civil Procedure 4(c)(2)(C)(i).



**PACA TRUST CHART**

Claimant: Cavendish Farms, Inc.      Debtor: Discount Sales, Inc.  
Date: 11/21/07      Terms: Net 10 + 1.5% per mo. interest + fees

INVOICE NUMBER	DATE OF TRANS.	PAYMENT DUE	NOTICE DATE	INVOICE AMOUNT	CREDITS ALLOWED***	BALANCE DUE	ACCRUED INTEREST*	INVOICE TOTAL	TRUST AMOUNT
428127	09/17/07	09/27/07	09/17/07	\$ 10,187.10	-	\$ 10,187.10	\$ 152.81	\$ 10,339.91	\$ 10,339.91
430169	09/28/07	10/08/07	09/28/07	\$ 10,187.10	-	\$ 10,187.10	\$ 152.81	\$ 10,339.91	\$ 10,339.91
Collection Costs**									\$ 5,150.00
<b>TOTALS</b>				<b>\$ 20,374.20</b>	<b>\$ -</b>	<b>\$ 20,374.20</b>	<b>\$ 305.61</b>	<b>\$ 20,679.81</b>	<b>\$ 25,829.81</b>

\* Interest calculated through date in chart

\*\* Collection Costs estimated through date in chart

Exhibit A





INVOICE DATE	INVOICE NUMBER	INVOICE TYPE	INVOICE
09/17/07	09/27/07	426127 RI	1

Cavendish Farms Operations Inc

25 Burlington Mall Rd

Burlington, MA

U.S.A.

01803

TELEPHONE: (506) 858-7777

FAX: (506) 858-7708

VIA

361

CUSTOMER PICK-UPS

S  
O  
L  
D

DISCOUNT SALES, INC  
P O BOX F  
2500 13TH STREET ENSLEY  
BIRMINGHAM AL 35208

S  
H  
I  
P

DISCOUNT SALES, INC  
P O BOX F  
2500 13TH STREET ENSLEY  
BIRMINGHAM AL 35208

T  
OT  
O

CUSTOMER NUMBER	LOAD NO	OUR REF NO	SALESMAN NO.	TERMS		
260216	JE00060421	508422 SO		2%10 NET 11 DAYS FROM INV		
CUSTOMER ORDER NUMBER	DATE OF RELEASE		F.O.B.	TRAILER NUMBER		
61004	09/17/07			706/74146		
PRODUCT CODE	DESCRIPTION		SHIPPED	WEIGHT	UNIT PRICE	AMOUNT
14869 53325	DANS CHOICE CHUNKS 6X5LB Net Price		1386	41580	7.50 7.50	10,395.00
AUDIT COPY			TOTAL	1386	41580	10,395.00
US FUNDS			Payment must be mailed to remit to address on or before discount date.	Gross Weight	44006	
				Discount Amount		207.90
			Amount Due After Discount			10,187.10

The Perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.499(e)(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



INVOICE DATE	INVOICE DATE	INVOICE NO.	PAGE
09/28/07	10/08/07	430169 RI	1

Cavendish Farms Operations Inc

25 Burlington Mall Rd

Burlington, MA

U.S.A.

01803

TELEPHONE: (508) 858-7777

FAX: (508) 858-7708

VIA

361

CUSTOMER PICK-UPS

S  
O  
L  
D

DISCOUNT SALES, INC  
P O BOX F  
2500 13TH STREET ENSLEY  
BIRMINGHAM AL 35208

S  
H  
I  
P

DISCOUNT SALES, INC  
P O BOX F  
2500 13TH STREET ENSLEY  
BIRMINGHAM AL 35208

T  
OT  
O

CUSTOMER NUMBER	LOAD NO	OUR REF NO	SALESMAN NO.	TERMS		
260216	JD E00067435	509715 SO		2%10 NET 11 DAYS FROM INV		
CUSTOMER ORDER NUMBER	DATE OF RELEASE		F.O.B.	TRAILER NUMBER		
61009	09/28/07			4A/0077202		
PRODUCT CODE	DESCRIPTION		SHIPPED	WEIGHT	UNIT PRICE	AMOUNT
14889 53325	DANS CHOICE CHUNKS 6X5LB Net Price		1386	41580	7.50 7.50	10,395.00
AUDIT COPY  US FUNDS			1386	41580		10,395.00
			Gross Weight	44006		
			Discount Amount		207.90	
			Amount Due After Discount		10,187.10	
Payment must be mailed to remit to address on or before discount date.						

AUDIT COPY

US FUNDS

Payment must be mailed to  
remit to address on or  
before discount date.

The Perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.499(e)(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.